

## Internal Revenue Service

Department of the Treasury  
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Date:  
March 25, 2010

### Legend

Date A =

The Investor =

q =

r =

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u =

v =

w =

Dear :

We respond to your letter dated February 16, 2010, requesting a supplemental ruling with respect to our prior letter ruling dated January 4, 2010 (PLR-146103-09) (the "Prior Letter Ruling"). The information provided in that letter and in later correspondence is summarized below. Capitalized terms used but not defined in this letter retain the meanings originally assigned to them in the Prior Letter Ruling.

This letter supplements the Prior Letter Ruling with regard to the proposed transaction described therein (the "Proposed Transaction").

### SUPPLEMENTAL FACTS

As described in the Prior Letter Ruling, Parent intends to undertake the Proposed Transaction to reduce its investment in Industry B.

On date A, Seller entered into a binding agreement (the "Purchase Agreement") with the Investor pursuant to which the Investor will purchase from Seller shares of Newco common stock representing up to g percent of the fully diluted equity interest in Newco (the "Purchased Shares") and a warrant (the "Warrant", and collectively with the Purchased Shares, the "Securities") to acquire from Newco additional shares of Newco common stock (the "Investor Sale"). The aggregate purchase price for the Securities is capped at \$r. The Warrant will have an exercise price equal to s percent (greater than 100 percent) of the price per share paid by public investors in the initial public offering ("IPO") of Newco common stock (the "Public Offering Price"), and a term of t years. In addition to the Securities, the Investor has the right to purchase from Seller up to \$u of shares of Newco common stock at a per share price equal to the Public Offering Price. The closing of the sale of this Newco common stock and the Securities to the Investor (the "Closing") will occur within y business days of the date on which the parties enter into the firm commitment underwriting agreement described in Step 2 of the Proposed Transaction, as described herein and in the Prior Letter Ruling (the "Underwriting Agreement").

The Purchased Shares, combined with the Newco common stock sold to third-party underwriters pursuant to the Underwriting Agreement, will represent more than 20 percent of the outstanding Newco common stock immediately following the Transfers.

### REVISIONS TO THE PROPOSED TRANSACTION

Parent would like to eliminate the issuance and sale of the Newco Preferred Stock from the Proposed Transaction unless the Investor Sale fails to close. Accordingly, assuming that the Investor Sale is consummated as described above, Steps 2, 6 and 7 of the Proposed Transaction will be revised to read as follows:

- (2) Several months later, Seller entered into the Purchase Agreement to sell to the Investor the Securities that Seller will receive in exchange for property, as described in Step 6. Such sale will occur pursuant to Step 7. Investor will not transfer any money or other property to Newco in connection with the Proposed Transaction (apart from any potential future exercise of the Warrant). Seller will also enter into the Underwriting Agreement pursuant to which it will be obligated to sell Newco common stock in the IPO, as described in Step 7. In the aggregate, the Newco

common stock sold to the Investor pursuant to the Purchase Agreement and the Newco common stock sold to third-party underwriters will represent more than 20 percent of the total outstanding Newco common stock immediately following the Transfers. An affiliate of Parent may act as one of several underwriters in the IPO, and for any Additional Dispositions.

- (6) Seller will transfer to Newco all of its equity in the Purchased Subsidiaries (which includes the stock of Target 1 and Target Sub 1A) together with the Additional Transferred Assets in exchange for 100 percent of the Newco common stock, the Warrant and a Newco note with a face amount of at least \$w (the "Newco Note"). Seller, Newco and certain other Parent affiliates will enter into a tax sharing agreement and other transitional and service agreements as part of the Proposed Transaction.
- (7) Pursuant to the Purchase Agreement and the Underwriting Agreement executed in Step 2, Seller will sell in exchange for cash: (i) more than 20 percent of Newco's common stock to the Investor and third-party underwriters, (ii) the Warrant to the Investor, and (iii) an additional amount of Newco common stock to an underwriter that is an affiliate of Parent. The stock will be sold to the underwriters for resale to the public. The IPO will be implemented within several business days of the completion of Step 6. Seller and the Investor will enter into a lock-up agreement pursuant to which they will not be allowed to dispose of any Newco common stock for a period of 180 days following the IPO.

If the Investor Sale is not consummated as described above, Steps 2, 6 and 7 of the Proposed Transaction will remain as described in the Prior Letter Ruling.

### SUPPLEMENTAL REPRESENTATIONS

In connection with its request for a supplemental ruling, Parent has reaffirmed all of the representations contained in the Prior Letter Ruling, as modified below:

- h. The terms of the Underwriting Agreement will be, and the terms of the Purchase Agreement were, determined pursuant to arm's-length negotiations with the underwriters and the Investor, respectively.
- l. The Newco Note will constitute the indebtedness of Newco for federal tax purposes, will have a face amount of at least \$w, and will have terms that will have been negotiated at arms-length. The Newco Note will not confer any voting rights in Newco.
- m. The sales of Newco common stock described in clause (i) of Step 7 will not be to parties whose ownership of Newco would be attributed to Seller

pursuant to section 318. In measuring attributed ownership under section 318, there shall be taken into account all events occurring or contemplated during the period beginning with Step 6 and ending with the completion of Step 9 of the Proposed Transaction.

### SUPPLEMENTAL RULING

Based solely on the information submitted and the representations made herein and submitted with the Prior Letter Ruling, we rule as follows:

The supplemental facts submitted and the revisions to the Proposed Transaction described above will have no effect on the rulings contained in the Prior Letter Ruling. Accordingly, those rulings will remain in full force and effect.

### CAVEATS

Except as expressly ruled herein, no opinion is expressed regarding the consequences resulting from the section 338(g) or section 338(h)(10) elections, or whether the Newco Note will constitute the indebtedness of Newco for federal tax purposes. Moreover, no opinion is expressed concerning the tax treatment of the Proposed Transaction or of any other matter under other provisions of the Code and regulations, or about the tax treatment of any aspect of or effect resulting from the Proposed Transaction not specifically covered by the above rulings.

Furthermore, the effectiveness of this ruling is conditioned upon Parent, Seller, Newco, the Purchased Subsidiaries, and the Indirectly Purchased Subsidiaries agreeing, if requested, to an extension of their respective statutes of limitations with respect to any issues raised by this letter ruling provided the extension is for a period acceptable to the Service.

### PROCEDURAL STATEMENTS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by the appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that this letter may not be used or cited as precedent.

A copy of this letter must be attached to the federal income tax return of each taxpayer involved in each taxable year in which the transaction is consummated. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by

attaching to the return a statement that provides the date and control number of this ruling letter.

Pursuant to a power of attorney on file in this office, we have sent a copy of this letter to your authorized representatives.

Sincerely,

*Debra L. Carlisle*

Debra L. Carlisle  
Chief, Branch 5  
Office of Associate Chief Counsel  
(Corporate)

cc: